88-1064

Supreme Court, U.S.
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CASE NUMBER _____

UNITED STATES SUPREME COURT

Term October, 1988

Clayton Kendall Miller III
Plaintiff-Appellant

Ninth Circuit
Court of Appeals
#86-2452

vs.

FDC TUC RMB
#83418

ConAgra and Peavey Corporation
Defendant - Appellees

Nature of Proceeding

Originally to determine the value of a stockholders shares in a public corp - oration that was sold at less than book value.

TITLE

Petition to the U.S. Supreme Court to review Ninth Circuit Court of Appealls final decision .

QUESTIONS PRESENTED

1. In a Mandantory Binding Arbitration Proceeding is the decision of a panel of Appraisers acting in a fiduciary capacity - - final - - absolutely - - and considered to be rendered in good faith when said decision ignores that which clearly exists and is in complete contradiction to the panel's decision?

May I clarify this? Some detail is necessary to understand this. In this matter the Corporation filed with the Securities and Exchange Commission accounting data signed by a CPA that clearly suggests value in terms of "Net Cash Flow" and Asset Value considerably overbook value. Replacement value of the Corporation's assets was several $100 million more than "Book Value".

The Corporation and the Appraisers "insisted all that mattered was Goldman

Saks opinion". "Since Miller was "one person" and appraisal's are expensive there would be no appraisal". It was suggested that I had to make them follow the law. Federal law recognize's that a Corporation's ability to earn a profit and accumulate assets determine the value of a stockholder's shares. In an appraisal proceeding such as this when these factors exist they cannot be ignored.

2. Question - Did the Federal District Court - Tucson and the Ninth Circuit Court of Appealls error and overlook Smith verses VanGorkom in reaching their decision?

3. How can a state law allow an opinion to be rendered that is in conflict with federal law and generally accepted procedures and yet be considered to be rendered in good faith. This Appraisal proceeding took almost 2 years to do?

4. Question - therefore how can this pro-

ceeding be considered to be in good faith? My understanding is that the Appraiser's opinion is binding when "good faith" is not a question. The wording of 301-40 suggests that "good faith" cannot be present - simply because the accounting data suggests value over the $30 per share my shares are supposed to be worth. Therefore, the Federal District Court in Tucson and the Ninth District Court in California should have remanded the "Appraiser's Report" back to the arbitration panel - because same ignored federal law and generally accepted methods of valuing a dissenters shares, therefore it was not rendered in good faith.

5. Is Minnesota law 301-40 unconstitutional in part? The law suggests a fiducary responsibility on the part of the arbitrator's. Yet, the Minnesota laws seem to allow them to ignore generally accepted methods as to how a shareholders shares are valued.

It allows the Appraisers to ignore

whatever factors are in conflict with the Appraiser's desired end result. The lawyer's tell me I am in a gray area of law. The point being that these Minnesota laws deprive me of the protection of federal law - that is the end result. Because the Appraisers could ignore whatever they wanted to the law gives them permission to do so. Also these laws are too general and far reaching and place the Appraisers in a position that is above federal law.

6. Question - do I need judical review to determine if this opinion violated the doctrine of good faith?

7. Could the Court clarify what consitutes "lack of good faith" in a mandantory binding arbitration proceedure such as this?

The Parties to this Proceeding are as follows:

Clayton Kendall Miller III — No. 86-2452

an unmarried man — FDC TUC-RMB #83418

Plaintiff - Appellant

vs.

ConAgra Corporation (a Delaware Corporation) and Peavy Corporation doing business in the state of Arizona

Defendant-Appellee

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WHY THE COURT SHOULD HEAR THIS CASE

The Court should hear this matter to clarify and preserve a stockholder's rights. Because so many buyouts happen at a price that has no relatiosnhip to actual value a stockholder that requests an appraisal proceeding will be short changed by the Corporation. Because an appraisal at more than the sales price creates a problem the Corporation simply refuses to appraise thereby destroying the concept of private property. And in this case making a mockery of the concept of binding arbitration by ignoring the umbrella of fiducary responsibility that surrounds binding arbitration.

There are many stockholders caught up in law suits as a result of leveraged buyout that took place at a "number" that has little relationship to a Corporation's real value. The wisdom of the Court in this matter would preserve the concept of the law being for everyone - - rich/man or poor/man.

GROUNDS ON WHICH THE COURT HAS JURISDICTION

On April 29, 1988 the U.S. Court of Appeals issued a memorandum dismissing the case.

Miller requested a rehearing May 9th, 1988.

On August 25, 1988 the Ninth Circuit Court denied a petition for a rehearing.

Miller request the U.S. Supreme Court review this matter.

Miller apologizes for coming before the Court without legal representation or benefit of legal advice. I do not know which statutory provision confers on this Court jurisdiction to review the decree in question by Writ of Certiorari.

The basis for federal jurisdiction in the Court of first instance is based on diversity pursuant to 1332 (A) of the U.S.

Judical Code (28 U.S.C. 1332 (A)). Venue lies in F.D.C. pursuant to 1391 (A) of the U.S. Judicial Code (28 U.S.C. 1391 (A)). I hope this is correct!

STATEMENT OF THE FACTS

Miller the Appellant in this matter owned 1100 shares of Peavey Company, a Minnesota Public Corporation, who's shares were traded on the New York Stock Exchange. Peavey Corporation was a big exporter of wheat.

Fiscal "81" was a record year in terms of sales and profits. The Corporation was strong financially with a long strong record of profitability.

The Carter Wheat Embargo took effect and caused Peavey's stock to drop in price.

ConAgra and the International Bankers put together a leverage buyout at $30 per share. The Appraiser's Report, page 29, suggests that the sales price was determined by finding a "number" close to book value - - and a "number" that would give ConAgra the proper

return on it's investment. Other factors which give a Corporation value were ignored! Since $30 was less than book value, Miller dissented under Minnesota laws 301-40 and 301-44, and requested an appraisal proceeding to determine the fair cash value of his shares. The $30 figure ignored Peaveys 10 year record of sales and profitability $86,000,000 in accumulated depreciation and the fair market value of Peavey's assets.

Right from the beginning, Peavey Corporation said they would not appraise my shares-- "it would cost too much" $30 was fair, Goldman Sak's said so, "the accounting data meant nothing", Peavey was not going to pay for an appraisal. Miller had to make them. Peavey insisted that the Corporation was on the brink of financial disaster and since I was one person I could go to Hell. Miller pointed to the accounting data which strongly suggests value over and above the $30 offer. Peavey said "they were not going to pay to prove anything"?

Peavey refused to make an offer saying, "they were not going to bid against themselves"!

This situation became a matter of principal and as a result, this law suit was filed in June of "83".

As soon as the Appraisers were in place they contacted my attorney and said I had to make a reasonable demand for payment - - there would be no appraisal proceeding. "Who did I think I was challenging - - the International Bankers?" The Corporation and the Appraisers refused to supply Miller with needed information to determine his share value (appraisals on Peavey's assets) and insisted $30 was it! My attorney pointed to the accounting data - - the Appraisers said it meant nothing and further stated they were not going to prove anything. Goldman Saks said $30 and that was good enough for them. Next came almost 2 years of constant pressure from the Corporation and the Appraisers to force Miller to pay for the proceeding.

while insisting that since Miller thought his shares were worth more, he would have to prove it - - the Appraisers would not all the while insisting Miller and his attorney was a "nut" looking for a handout!

Finally the Appraisers filed their report. The conclusion being $30 was fair cash value. What else could the Appraiser do? If they did what they were supposed to there would be a prodigious perponderance of accrued appraised value so as to make the entire transaction highly suspect.

In view of Smith verses VanGorkom, decided by the Delaware Supreme Court on January 29, 1985, the Court determined that an appraisal of a shareholder stock that was less than book value and ignored such factors as accumlated depreciation was questionable. The Court further stated that when an appraisal proceeding found value over and above the per share sales price, said value belonged to whoever had a claim to it. ConAgra is a

Delaware Corporation. Does this case apply to the matter at hand?

In the matter at hand the accounting data suggests several hundred million in value, see addendum SEC filings, page 25 & 26.

Miller suggested to the Federal District Court, Tucson, - that this proceeding was not in good faith - - the Court said no. Miller went on to the Ninth Circuit Court, San Francisco, - - the Court said no!

Again the lawyers tell me I am in a gray area. Overturning binding arbitration by claiming the accounting data suggests lack of good faith is difficult. The court system is loaded with stockholder suits; most of which are the result of mergers that took place at prices that ignore most of the factors that give a Corporation value. Perhaps the U.S. Supreme Court will hear this case and clear the way for other little

guys caught up in Wall Street's back room shenanigans. To do so would solidify a stockholder appraisal's rights while stabilize our financial markets.

Since this action began in June of 1983, Peavey Corporation and the Appraisals never once denied the accuracy of the accounting data - - instead their cry was "so what" - "what can he do about it?". Binding arbitration is binding period! I think not - - for if so, the purpose of binding arbitration will be seriously weakened.

Miller requests that on behalf of the small stockholders who get caught up in questionable leveraged buyouts such as this that the U.S. Supreme Court hear this plea for justice.

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